



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 10422826

Date: MAY 12, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a surgeon, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree but that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy,

cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that, after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as a matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The Director further found that the proposed endeavor has substantial merit; however, the Director concluded that the Petitioner did not establish that the proposed endeavor has national importance. For the reasons discussed below, the Petitioner has not established that a waiver of the requirement of a job offer is warranted.

The Petitioner initially described the proposed endeavor as “[c]linical observation and diagnosis, reconstructive surgery of nerves, ligaments, and tissues” as a reconstructive surgeon. The Petitioner also referenced potential speaking engagements regarding reconstructive surgery. In response to the Director’s request for evidence (RFE), the Petitioner also noted “commitment letters from the [redacted] [redacted] based in [redacted] OH[,] . . . and a private entity[,] [redacted] (Florida),” inviting the Petitioner “to participate as a mentor and instructor of the training programs organized by these providers.” The Petitioner further asserted that “after my admission to the U.S. I will be able to expand my network to secure more training and consulting engagements of the similar nature.”³

On appeal, the Petitioner directs our attention to *The Complexities of Physician Supply and Demand: Projections from 2017-2032*, a study completed by the Life Science division of HIS Markit at the request of the Association of American Medical Colleges (AAMC). In relevant part, the study estimates that there will be a shortage of “surgical specialists” between 14,300 and 23,400 by 2032. However, the study does not elaborate on the estimated shortage of any particular type of surgical specialist, specifically regarding the estimated shortage of reconstructive surgical specialists.

The Petitioner also directs our attention to a report titled *National and Regional Projections of Supply and Demand for Surgical Specialty Practitioners: 2013 – 2025*, prepared by the U.S. Department of Health and Human Services, which, in contrast to the general information in the AAMC study, estimates that the shortage of reconstructive surgeons in 2025 would be approximately 1,500.⁴

The Petitioner also asserts on appeal that an article published by the *Annals of Plastic Surgery* in 2014 establishes the national importance of the proposed endeavor. The article states that “[a]n expanding U.S. population[,] . . . growing competition from other specialties, a constant rate of retiring plastic surgeons, and a static number of residents places increasing demands on the plastic surgical workforce in the coming years.”

The Petitioner’s proposed endeavor of practicing reconstructive surgery and training reconstructive techniques to other surgeons, in light of the evidence of a prospective shortage of reconstructive surgeons has merit; however, whether the endeavor has merit is not an issue on appeal. Instead, the

² See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ Although we do not discuss each document in the record for brevity, we have reviewed the record in its entirety.

⁴ The publication refers to the particular type of surgical specialists as “plastic surgery.”

issue is whether the endeavor has national importance. The first *Dhanasar* prong requires an endeavor to have both substantial merit and national importance, as separate, conjunctive criteria. *Dhanasar*, 26 I&N Dec. at 889-90.

Dhanasar provided examples of endeavors that may have national importance, as required by the first prong, having “national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances” and endeavors that have broader implications, such as “significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area.” *Id.* at 889-90.

The Petitioner does not assert, and the record does not support the conclusion, that the proposed endeavor would cause “national or even global implications” within the field of reconstructive surgery. *Id.* We acknowledge that the instructional aspect of the proposed endeavor may train other surgeons to perform reconstructive surgical techniques; however, the Petitioner does not establish how his endeavor would improve processes or advance the practice of medicine or surgery that would impact the field more broadly.

The record does not support the conclusion that the proposed endeavor would “have significant potential to employ U.S. workers.” *Id.* at 890. The instructional aspect of the proposed endeavor appears to train surgeons that are already employed as such, rather than creating new surgeons who are not already employed as surgeons. In response to the RFE, the Petitioner asserted that his endeavor also includes “eventually financ[ing] my own diagnostic facility with training opportunities for young professionals . . . [which] will require hiring licensed physicians and qualifying staff.” However, the Petitioner does not elaborate on when he eventually plans to establish the facility, where he intends to establish the facility, the number of physicians and staff he intends to hire, and other details that would assist us in understanding whether the endeavor has “significant potential to employ U.S. workers.” *Dhanasar*, 26 I&N Dec. at 890.

The Petitioner asserts on appeal that his “established credentials and commitment to the practice of reconstructive surgery create opportunity for the positive impact in lives of many individuals affected by debilitating conditions and alleviate [the] adverse economic impact of the shortage in particular geographic areas.” However, as noted above, the endeavor’s opportunity to improve the quality of life of individuals affected by debilitating conditions addresses the endeavor’s merit, rather than its national importance, because the record does not establish that the reconstructive surgery would have “substantial positive economic effects” on those individuals. *Dhanasar*, 26 I&N Dec. at 890. Although the Petitioner references alleviation of the “adverse economic impact of the shortage [of reconstructive surgeons] in particular geographic areas,” the only geographic areas his endeavor specifically identifies are [redacted] Ohio, and the state of Florida. A venture or undertaking that focuses on one geographic area of the United States may establish national importance if it can demonstrate broader implications, such as the significant potential to employ U.S. workers or other substantial positive economic benefits. *Dhanasar*, 26 I&N Dec. at 890. Here, the Petitioner does not establish that the proposed endeavor will broadly impact the field of reconstructive surgery such that it rises to the level of national importance. The Petitioner does not elaborate on the shortage of reconstructive surgeons in [redacted] Ohio, and any particular part of the state of Florida, beyond the national estimates discussed above. The Petitioner also does not elaborate on how many surgeons he would train to perform reconstructive surgical techniques in those areas, whether those areas are

economically depressed, the extent to which training surgeons to perform reconstructive surgical techniques in those areas—or performing the reconstructive surgical procedures himself—would affect the areas’ economic depression, and other salient details. Accordingly, the Petitioner has not demonstrated the proposed endeavor would have “substantial positive economic effects,” or otherwise demonstrated its national importance. *Dhanasar*, 26 I&N Dec. at 890.

In summation, the Petitioner has not established that the proposed endeavor has both substantial merit and national importance, as required by the first *Dhanasar* prong, and therefore is not eligible for a national interest waiver. We reserve our opinion regarding whether the record satisfies the second or third *Dhanasar* prong.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.